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July 17, 1978

Frank E. Whaland, Commissioner
Insurance Department
169 Manchester Street
Concord, New Hampshire 03301

Dear Commissioner Whaland:

This is in reply to your letter of June 1 requesting an opinion with respect to the 1977 amendment to New Hampshire's premium tax. You have asked whether RSA 400-A:31 I(b) which for the first time imposes the pre-existing premium tax on premiums and other considerations not allocated to any other state, can be applied to the entire 1977 calendar tax year where the statute's effective date is October 7, 1977. For the reasons outlined below it is my opinion that the statute applies to the entire year.

RSA 400-A:31 I(b) states, with respect to the 2% premium tax imposed by Section 400-A:32 I, that,

In determining the amount of such gross direct premiums taxable in this state, all such premiums or other consideration written, procured or received in this state shall be deemed written on property, subjects or risks located, resident or to be performed in this state except such premiums or other considerations as are properly allocated or apportioned and reported as taxable premiums of any other state or states. The provisions of this subparagraph do not apply to premiums properly allocated to foreign countries.



Frank E. Whaland, Commissioner
Insurance Department
July 17, 1978

This provision has the effect of extending the existing tax, formerly applied only to policies covering properties or risks in New Hampshire, to any other policies not allocated by an insurance company to another state.

The premium tax for each calendar year is due on March 1 of the following year. RSA 400-A:31 (I). The effective date of the amendment was, as is noted above, during the calendar year 1977, and well in advance of the March 1st assessment and due date. While a situation of this nature has not arisen often, it is fairly well settled that amendments to tax statutes control the computation of taxes imposed on or after the effective date of the amendment regardless of the fact that the tax period is in progress or even has terminated. Moreover, such an effect has been held to be clearly prospective, and therefore constitutional. See Oleson v. Borthewick, 33 Haw. 766 (1936); Anderson Bros., Inc. v. Commonwealth, 138 Va. 18, 120 S.E. 860 (1924); Hunton v. Commonwealth, 166 Va. 229, 183 S.E. 873, 880 (1936); Seaboard Finance Corp. v. Commonwealth, 185 Va. 280, 38 S.E. 2d. 770, 773 (1946); Bushaber v. Union Pacific R.R. 240 U.S. 1, 20 (1915).

Sincerely,



Andrew R. Grainger
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ARG/pja